

REMARKS

Claims 1-10, 13-16, and 18-28 remain pending in this application. In view of the following remarks, it is respectfully submitted that all of the above-identified claims are allowable.

The Examiner has objected to the specification for not providing antecedent basis for the term "first portion" and "second portion." Applicants traverse this objection, since these terms are nothing more than explicit references to intrinsic traits of the port that even the least perceptive of persons, and certainly a person of ordinary skill, would recognize as such. If the Applicants amended the claim to recite such terms as the length of the F-shaped connector, the diameter of the lumens, or the width of the gap between the first and second arms, the Examiner would not argue, would he, that the specification would have to be amended to include the words "length", "diameter," or "width," if such words happened to be missing? Just as an object occupying three dimensions inherently has length, width, and height, and on that self-evident basis such terms need not be expressly included in the specification, neither does the trivial realization that every compound object consists of two or more portions establish that the specification must be amended to explicitly state that the object has portions.

Claims 1-10, 13-16, and 18-28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,892,518 to Cupp et al. (hereinafter "Cupp") in view of U.S. Pat. No. 5,542,923 Ensminger et al. (hereinafter "Ensminger"). Claims 1-10, 13-16, and 18-28 stand rejected under 35 U.S.C. 103(a) as obvious over U.S. Pat. No. 5,542,923 Ensminger et al. (hereinafter "Ensminger").

The Examiner has decided to maintain the contention that Cupp shows an F-shaped connector. The Examiner does so by way of mere assertion, without attempting any argument intended to persuade someone to credit such an assertion. The Examiner points to the port assembly of Figure 2, in particular, the eccentrically shaped Y-connector 107. As much of a stretch it is to describe this connector as Y-shaped, the contention that this connector looks like an "F" is beyond the pale. If a person had traced the shape of this connector on paper, what person, in fact, what school child, would identify it as an "F"? An "F" written to look like

connector 107 would be an example of sloppy penmanship that bears at least a minimal resemblance to an "F," it would not be intelligible as an "F." In connector 107, the two arms are not parallel to each other; they are not even close to being parallel. The arm at the distal end of the connector barely deviates from the axis of the trunk, a far cry from the ninety degree deviation for the upper arm of the traditional "F." Although the connector 107 barely resembles a "Y", at least it shares with a traditionally shaped "Y" the feature of two arms that extend away from each from a common point on a trunk. Every visual feature that unique distinguishes a traditionally formed "F" from every other letter is thus absent from the Y connector 107. The diagram that the Examiner provides at the end of the office action is unhelpful since it engages the issue at a level of generality that fails to address the issue at the level of specificity recited in the claim. The claim calls for the first and second arms to be parallel, yet the Examiner does not provide an argument showing how the first and second portions identified as such in the diagram are parallel, nor could he, since these portions are quite clearly extending along respective axes that intersect each other.

As to the contention by the Examiner that the Applicants have not shown any criticality for the particular shape of the connector, where is the authority by which the Examiner can substitute an allegation of non-criticality for hard evidence or scientific reasoning? The Examiner is charged with rejecting only those claims for which evidence has been found that demonstrates objectively the unpatentability thereof. A cavalier assertion of non-criticality falls short of this standard of proof. As for the assertion that the shape is a mere design choice, Applicants traverse this assertion and request that the Examiner support it with actual evidence, in the form of a reference or, if based on the Examiner's own knowledge, or a declaration from the Examiner himself. See MPEP at Section 2144.03.

Similarly, with respect to Ensminger, the Examiner has not shown how this reference overcomes any of the deficiencies of Cupp. Even more clearly than the connector 107 of Cupp, the connector 90 in Ensminger shows a pair of arms 92 and 92' that are oriented in the way traditionally conceived for the letter Y and thus not in the way commonly understood for the letter "F." Had the claims never recited an F-shaped connector, Applicants submit that it would not have occurred to the Examiner to assert that what clearly resembles (or in the case of Cupp is

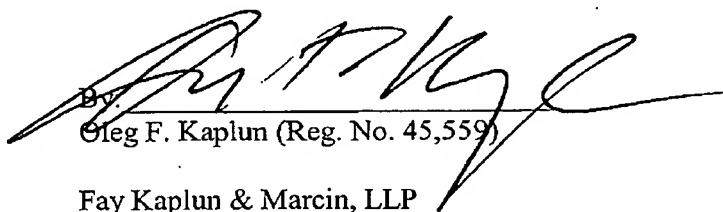
at least clearly identified) as Y shaped is in fact F-shaped. One of ordinary skill certainly would not view the matter in this way, given that such a person would have judged the issue by determining which letter, traditionally conceived, most closely resembles the shape of the Cupp or Ensminger connectors. Therefore, in view of this discussion, independent claims 1, 13, 19, and 22 are not rendered unpatentable by the combination of Cupp or Ensminger.

As for the dependent claims, Applicants submit that they are patentable for at least the same reasons given above. What is also striking about this office action, as well as the previous one, is that the Examiner does not explicitly consider any of the limitations of the dependent claims. Not one sentence, not even a clause, in either office action is directed to such features as the specific angular range in claim 5 or the semicircular cross section of claim 8, to name just two of the dependent claims ignored in the body of the rejections. If the Examiner chooses to maintain this rejection, Applicants request that the Examiner specifically address each dependent claims and point out where in the references they are taught.

In view of the remarks submitted above, the Applicants respectfully submit that the present case is in condition for allowance. All issues raised by the Examiner have been addressed, and a favorable action on the merits is thus earnestly requested.

Respectfully submitted,

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